

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT HALL,

Defendant-Appellee.

UNPUBLISHED

May 24, 2005

No. 251905

Wayne Circuit Court

LC No. 03-008196-01

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting defendant's motion to quash and dismissing the case without prejudice. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant was charged with possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v). At the preliminary examination, the evidence showed that police officers executed a search warrant at a residence wherein there were twelve to fourteen persons, including defendant. Defendant was found in a second-floor bedroom standing next to a small refrigerator. A plastic bag containing cocaine was located in plain view on top of the refrigerator within defendant's reach. The district court bound defendant over as charged. The circuit court granted defendant's motion to quash the information and dismissed the case without prejudice, finding that no evidence showed that defendant possessed the cocaine or knew of its presence.

The purpose of a preliminary examination is to determine if a felony was committed and whether there is probable cause to believe the defendant committed it. *People v Yost*, 468 Mich 122, 125-126; 659 NW2d 604 (2003); MCL 766.13; MCR 6.110(E). "Probable cause requires a quantum of evidence 'sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief' of the accused's guilt." *Yost, supra* at 126, quoting *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997).

The prosecutor need not establish guilt beyond a reasonable doubt at the preliminary examination. *People v Drake*, 246 Mich App 637, 640; 633 NW2d 469 (2001). "However, evidence regarding each element of the crime or evidence from which the elements may be inferred must exist. When the evidence conflicts or raises a reasonable doubt concerning guilt, there are questions for the trier of fact, and the defendant should be bound over." *Id.*, quoting *People v Carlin (On Remand)*, 239 Mich App 49, 64; 607 NW2d 733 (1999). A circuit court

reviews a district court's decision whether to bind over a defendant for an abuse of discretion, and may not substitute its judgment for that of the district court. *Drake, supra* at 639-640. We review de novo the circuit court's decision whether the district court abused its discretion in deciding whether to bind over a defendant. *Id.* at 640. Thus, on appeal, we review the district court's original decision whether to bind over a defendant for an abuse of discretion. *Id.*

The elements of possession of less than twenty-five grams of cocaine are that the defendant knowingly possessed cocaine contained in a mixture that weighed less than twenty-five grams. MCL 333.7403(2)(a)(v). "A person need not have physical possession of a controlled substance to be found guilty of possessing it." *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Possession may be either actual or constructive. *Id.* "The essential question is whether the defendant had dominion or control over the controlled substance." *Id.* "A person's presence at the place where the drugs are found is not sufficient, by itself, to prove constructive possession; some additional connection between the defendant and the contraband must be shown." *Id.* "However, circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession." *Id.*

Here, defendant was found in a bedroom in close proximity to cocaine; however, no other evidence, such as the presence of male clothing in the bedroom, or papers identifying defendant as an occupant of the residence or the room, were discovered. Cf. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). No evidence showed that defendant attempted to flee or took any other action, such as making furtive gestures, that would support an inference of consciousness of guilt. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Defendant's mere presence in the room in which the cocaine was found was insufficient to support an inference that he constructively possessed the cocaine. *Fetterley, supra* at 515. The circuit court did not err in concluding that the district court abused its discretion by binding defendant over for trial, and properly granted defendant's motion to quash the information and dismiss the case. *Drake, supra* at 639-640.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter